

In re Interest of Vladimir G.

Caselaw No.

No. S-19-645

Filed on

Friday, June 12, 2020

Summary: Abigail G. is the biological mother of Vladimir G. In February 2018, Abigail took Vladimir to the hospital because she was concerned that her boyfriend, Thomas Boyd, may have sexually abused Vladimir. At this time, Abigail told medical and law enforcement staff that she would no longer allow Boyd to have contact with Vladimir. However, in March 2018, Vladimir was again examined in the hospital for injuries consistent with abuse. Abigail told law enforcement that the injuries had occurred while Vladimir was in Boyd's care. The state then filed a petition alleging that Vladimir was a child within the meaning of § 43-247(3)(a).

Abigail was called as a witness at the adjudication hearing. Abigail objected to testifying based on Fifth Amendment grounds. The county court overruled Abigail's objection and required her testimony. The court found Vladimir to be a child within the meaning of § 43-247(3)(a). The court also recognized Abigail's assertion that her right to remain silent had been violated. However, the court noted that her testimony was mostly consistent with other testimony.

Abigail appealed the order adjudicating Vladimir, arguing that the court erred when it (1) violated her constitutional and statutory right to remain silent by forcing her to testify and (2) found that there was sufficient evidence to adjudicate Vladimir within the meaning of § 43-247(3)(a).

The Court first asked whether Abigail was entitled to invoke the Fifth Amendment privilege in this adjudication hearing. The Court cited appellate precedent holding that parents may claim a Fifth Amendment privilege against self-incrimination in termination proceedings (see *In re Interest of Clifford M. et al.*) before holding that the privilege may also be invoked by a parent in the adjudication phase of a juvenile proceeding. Citing the Fifth Amendment doctrine, the Court held that a parent in a juvenile adjudication hearing may invoke her Fifth Amendment privilege to refuse to answer questions when the answers might incriminate her in future criminal proceedings.

A court's decision to allow a witness to invoke her Fifth Amendment right will be reviewed for an abuse of discretion. As a result, the county court had broad discretion to determine whether Abigail's testimony was incriminating and therefore subject to the Fifth Amendment privilege. The Court ultimately did not need to decide whether the court abused its discretion in determining that Abigail's testimony was not incriminating because, even if the testimony was incriminating, the error was not reversible error.

In a civil case, the admission or exclusion of evidence is not reversible error unless it unfairly prejudiced a substantial right of the complaining party. Here, admission of Abigail's testimony did not unfairly prejudice Abigail's substantial right for two reasons. First, there was sufficient evidence to adjudicate Vladimir even if Abigail's allegedly incriminating testimony were stricken. The testimony of the doctor, nurse, and sheriff, as well as Vladimir's medical records, largely conformed with the content of Abigail's testimony. Second, the Fifth

Amendment is not violated unless and until a person's self-incriminating statements are used to prosecute that person in a criminal proceeding. Even if Abigail's testimony was incriminating, no Fifth Amendment right violation could occur until the testimony was used against Abigail in a criminal proceeding.

Thus, the Court ultimately concluded that Abigail could and did invoke her Fifth Amendment privilege in this adjudication. However, even if it were an abuse of discretion, the county court's decision that Abigail's testimony was not incriminating and therefore not subject to the Fifth Amendment privilege was not reversible error.

The Court next turned to the question of whether there was sufficient incriminating evidence to support Vladimir's adjudication. The Court held that the evidence was sufficient to show that Vladimir was "in a situation dangerous to life or limb or injurious to his health" because he had suffered injuries on more than one occasion and that he "lacked proper parental care by reason of the fault or habits of his parent" because Abigail had left him in Boyd's care even though she had previously suspected Boyd of abusing Vladimir.

Again, the Court noted that even if Abigail's testimony had been excluded for Fifth Amendment purposes, there was still sufficient evidence to support the adjudication. Abigail's testimony was generally consistent with the depositions of the doctor, nurse, and sheriff. To the extent that Abigail's testimony varied from this other evidence, the county court had the discretion to determine which evidence was more credible. In addition, the Court read the county court's discussion of the Fifth Amendment issue as evidence that the court's decision was not dependent on Abigail's testimony. The Court agreed that the additional evidence adequately supported the adjudication.

The Court affirmed the county court's order of adjudication.
